MEMORANDUM

May 27, 2010

To: Federal Practitioners

From: Michael R. Merz, Magistrate Judge

Re: Amendments to the Local Rules of Practice

The District Judges have approved amendments to the Local Rules of Practice as detailed in this Memorandum. The Amendments were proposed to and approved by the Local Rules Advisory Committee before being considered by the Court. They are posted here for your comments which should be sent not later than June 26, 2010, to Local_Rules@ohsd.uscourts.gov.

1. S. D. Ohio Civ. R. 5.2(b) reads:

> **Delivery Electronically Including Facsimile.** Delivery by electronic means through this Court's ECF system consented to by the person served, pursuant to Fed. R. Civ. P. 5(b)(2)(D), or by facsimile transmission between the parties or the parties' counsel, shall constitute "delivery" and proper service under Fed. R. Civ. P. 5(b).

This language was adopted prior to the 2007 style changes to the Federal Rules of Civil Procedure. The revised rule will read:

> **Delivery Electronically Including Facsimile.** Parties may make service through the Court's CM/ECF system on other parties who are registered users of the system as provided in Fed. R. Civ. P. 5(b)(2)(E).

Rationale:

1. The current reference to Fed. R. Civ. P. 5(b)(2)(D) is incorrect. The relevant language was moved to 5(b)(2)(E) in the amendments effective December 1, 2007.

2. By amendment just made to the CM/ECF Policy Manual, any person who becomes a registered user of the CM/ECF system has by the act of registering consented to electronic service through the system.

3. It is no longer necessary to discuss facsimile service in the Local Rules because Fed. R. Civ. P. 5(b)(2)(F) covers service by any other means consented to in writing by the receiving party. Although such a consent could be filed with the Clerk, I have never seen one and filing of such a consent is not mentioned in Fed. R. Civ. P. 5.

The current text of S. D. Ohio Civ. R. 5.2(b) gives the impression that our Court has authority to authorize fax service in the absence of consent by the receiving party, which is arguably more than Fed. R. Civ. P. 5 allows.

2. S. D. Ohio Civ. R. 5.2(c) reads:

> **Notice of Withdrawal from the ECF System.** An attorney seeking to revoke consent to receive electronic service using the ECF system, given pursuant to Fed. R. Civ. P. 5(b)(2)(D), shall provide written notice to the Clerk and to all counsel of record in each case in which the attorney has appeared no less than ninety (90) days prior to the effective date of such revocation. Absent such notice no revocation is effective.

This language would be repealed in its entirety.

Rationale:

This language goes back to the original adoption of electronic filing in 2003 when becoming a registered user was voluntary and it was anticipated that many attorneys might not want to use the system. In 2006 Fed. R. Civ. P. 5 was amended to allow courts by local rule to require electronic filing, so long as they provided for "reasonable exceptions." Fed. R. Civ. P. 5(d)(3). Our Court did that by adopting S. D. Ohio Civ. R. 5.1(c) which requires electronic filing "[e]xcept as otherwise provided herein or unless otherwise authorized by the assigned judicial officer, . . ." Because we provide exceptions on a case-by-case basis and generic exceptions for, e.g., *pro se* litigants and Social Security administrative records, there is no longer a need for a general withdrawal of registration section.

3. S. D. Ohio Civ. R. 26.2 reads:

> (a) Parties shall omit or, where inclusion is necessary, partially redact from court filings, social security numbers, full dates of birth, bank or other financial account numbers, names of minor children, or other personal information which might contribute to identity theft. If a date of birth or an account number must be referenced, unless the assigned judicial officer orders otherwise, and to comply with the policy of the Judicial Conference of the United States and the E-Government Act of 2002, Pub. L. No. 107347, parties shall use only the year, or the last four digits of the account. If names of minor children must be referenced it is appropriate to use the child's initials, or a generic abbreviation such as "CV" for "child victim."
>
> (b) When a filing is redacted as permitted by subsection (a), the filing party's trial attorney must maintain an un-redacted copy of the filing. Upon request, it must be provided to the judge and to counsel for any

party. Unrepresented parties must provide the Clerk of Court with an un-redacted copy of the filing.

This Rule would be repealed in its entirety..

Rationale:

This Rule was adopted after enactment of the E-Government Act of 2002 to cover these issues until the Supreme Court acted to adopt a national rule to cover this subject. Fed. R. Civ. P. 5.2 was adopted effective December 1, 2007,

> in compliance with section 205(c)(3) of the E-Government Act of 2002, Public Law 107-347. Section 205(c)(3) requires the Supreme Court to prescribe rules "to protect privacy and security concerns relating to electronic filing of documents and the public availability . . . of documents filed electronically."
>
> This rule is derived from and implements the policy adopted by the Judicial Conference in September 2001 to address the privacy concerns resulting from public access to electronic case files.

(Advisory Committee Notes 2007, reprinted in West Judicial Code Handbook.)

The Supreme Court having adopted Fed. R. Civ. P. 5.2 which covers this topic in great detail, there is no longer a need for a cognate local rule. Obviously to the extent S. D. Ohio Civ. R. 26.2 either contradicts or repeats Fed. R. Civ. P. 5.2, it is no longer an authorized local rule, per Fed. R. Civ. P. 83(a).

4. S. D. Ohio Civ. R. 83.3 and 83.4 presently read:

83.3 ADMISSION TO THE BAR

(a) **Roll of Attorneys.** The permanent bar of this Court shall consist of those attorneys currently admitted and those attorneys hereafter admitted, in accordance with these Rules or by order of this Court, to practice in this Court. Attorneys admitted *pro hac vice* are not permanent members of the bar of this Court.

(b) **Eligibility.** Any member in good standing of the Bar of the Supreme Court of Ohio is eligible for admission as a permanent member of the Bar of this Court.

(c) **Application for Admission**

(1) All candidates for admission to the bar of this Court, other than those eligible under subsection (c)(2) and (c)(3) of this Rule, shall file with the Clerk at least seven (7) days prior to the examination for admission an application on the form provided by the Clerk. The applicant shall affirmatively certify that

he or she is familiar with the Court's ECF system. The application shall also contain a certificate of two members of the Bar of this Court, vouching for the good moral character and professional reputation of the applicant. Each candidate shall be present for examination at the next examination after the filing of the candidate's application. If the candidate fails to be present, it will be necessary to file a new application.

(2) Applicants in good standing as members of the permanent bar of the United States District Court for the Northern District of Ohio for at least two years immediately preceding their application to become members of the Bar of this Court are not required to submit the certificate of two members of the Bar of this Court, or to take and pass the examination for admission. Such applicants must, however, comply with all other requirements of Rule 83.3.

(3) Attorneys for the United States of America who are authorized by statute to appear in all federal courts, are permitted to appear on behalf of the United States upon filing an application for admission on the form provided by the Clerk, and providing a current certificate of good standing from the highest court of the State in which the attorney is admitted to practice. Attorneys for the United States are not required to take and pass the examination for admission, submit the certificate of two members of the Bar of this Court, or pay the application fee for admission. Unless otherwise ordered, attorneys for the United States shall register with this Court for electronic filing.

(d) **Examination for Admission**. Under the direction of the Chief Judge, a committee appointed by the judges of this Court shall prepare and administer a uniform examination in the cities of Columbus, Dayton, and Cincinnati on the first Tuesday in June and December, or at such other time as may be ordered.

(e) **Permission to Participate in a Particular Case**. The Court's strong preference is that attorneys seek permanent admission to the Bar of this Court. However, any member in good standing of the highest court of any State, not otherwise eligible for admission to the Bar of this Court, may, upon written motion on the form provided by the Clerk, approval of the Court, and payment of the *pro hac vice* admission fee, be permitted to appear and participate in a particular case, or in a group of related cases. An attorney must pay the *pro hac vice* admission fee each time he or she seeks *pro hac vice* status. A current certificate of good standing from the aforementioned court(s) must accompany the motion for admission *pro hac vice*. Permission to appear *pro hac vice* may be withdrawn at any time. Such motion is not required for the purpose of having participating counsel's name appear on the pleadings. Unless otherwise ordered, all counsel admitted *pro hac vice* shall register with this Court for electronic filing.

(f) **Fees**

(1) Upon admission or upon application for readmission following disbarment

or suspension from the Bar of this Court, the attorney shall pay to the Clerk such fees as shall be prescribed by the Judicial Conference of the United States and by order of this Court. Any fee prescribed by order of this Court shall be paid into the Court's Attorney Admission Fund to be used for such purposes as inure to the benefit of the bench and bar in the administration of justice within this District as determined to be appropriate by the Court.

(2) Each attorney applying for initial admission to the Bar of this Court shall tender to the Clerk any fee prescribed for such admission by order of this Court. Should the applicant not pass the bar admission examination administered by this Court, the fee will not be returned to the applicant except for good cause shown by the applicant. An applicant who wishes to re-take the bar admission examination at the next available opportunity is not required to tender any such fee again unless the previously tendered fee was returned.

(3) Each attorney previously disbarred or suspended from the Bar of this Court, shall tender to the Clerk any fee prescribed for readmission by order of this Court upon application for readmission to the Bar of this Court. Such readmission shall be subject to the Order for Readmission of this Court.

(4) All attorneys seeking admission *pro hac vice* shall tender to the Clerk any fee prescribed for admission *pro hac vice* by order of this Court. This fee shall not be collected from attorneys employed by the Ohio Public Defender or the Ohio Attorney General.

(5) All such fees collected by the Clerk shall be deposited for the use of the Bar and the Court in the Court's Attorney Admission Fund to be used for such purposes as inure to the benefit of the bench and bar in the administration of justice within this district as determined to be appropriate by the Court.

(g) **Disciplinary Enforcement**. The conduct of attorneys admitted to practice before this Court, or admitted for the purpose of a particular proceeding (*pro hac vice*), and the supervision of their conduct by this Court shall be governed by the Model Federal Rules of Disciplinary Enforcement (with the exception of Rules XI and XII). (See Appendix to these Rules.)

83.4 TRIAL ATTORNEY

(a) **Designation and Responsibility**. Unless otherwise ordered, in all actions filed in, transferred to or removed to this Court, all parties not appearing *in propria persona* shall be represented of record by a "trial attorney" who is a permanent member of the bar of this Court in good standing. Unless such designation is changed pursuant to subsection (c) of this Rule, the trial attorney shall attend all hearings, conferences and the trial itself, unless otherwise excused. Admission *pro hac vice* does not entitle an attorney to appear as the trial attorney as set forth in this Rule.

(b) **Service.** All notices and communications from the Court and all documents required to be served on other parties by these Rules and by the Federal Rules of Civil Procedure shall be served upon the trial attorney. (Also see S. D. Ohio Civ. R. 5.2, "Certificate of Service".) Trial attorneys shall be responsible for notifying co-counsel or associate counsel of all matters affecting the action.

(c) **Withdrawal or Substitution of Trial Attorney or Co-Counsel**

(1) **Trial Attorney**. A trial attorney may be allowed to withdraw, or a new trial attorney substituted, only by filing either a notice or motion that complies with this Rule. The Court may impose terms or conditions upon any withdrawal or substitution. Unless otherwise ordered, a trial attorney shall not be permitted to withdraw from an action at any time later than twenty-one (21) days in advance of trial or the setting of a hearing on any motion for judgment or dismissal and, unless otherwise ordered, the substitution of a trial attorney shall not serve as the basis for a postponement of the trial or any hearing.

(i) **Notice of Withdrawal and Substitution**. The withdrawal and substitution may be accomplished by filing a notice which is signed by the withdrawing trial attorney, the client, and a substitute trial attorney. If the substituting trial attorney is a member of the same partnership, legal professional association, or governmental attorney group as the trial attorney to be substituted for and the notice affirmatively states that the substitution is made with the client's knowledge and consent, the client's signature is not required.

(ii) **Motion for Withdrawal and/or Substitution**. If the withdrawing or substituting trial attorney cannot obtain the signatures required in order to accomplish withdrawal or substitution by notice, such attorney may file a motion for withdrawal or substitution. The motion must be served upon the client and the certificate of service must so state. The motion must also assert that good cause, as defined by the Rules of Professional Conduct, exists to permit the withdrawal and substitution.

(2) **Co-Counsel**. Any attorney who has appeared in a case in any capacity other than as trial attorney may withdraw that appearance by filing a notice of withdrawal which is signed by the withdrawing attorney and by the trial attorney for the party on whose behalf the withdrawing attorney has previously appeared. The trial attorney's signature on such a notice constitutes an affirmative representation that the client has authorized the withdrawal. If the trial attorney is unwilling or unable to sign such a notice, the attorney who wishes to withdraw must file a motion that complies with subsection (1)(ii) of this rule.

As amended, these two rules would read:

83.3 ADMISSION TO THE BAR

(a) **Roll of Attorneys.** The permanent bar of this Court shall consist of those attorneys currently admitted and those attorneys hereafter admitted, in accordance with these Rules or by order of this Court, to practice in this Court. Attorneys admitted *pro hac vice* are not permanent members of the bar of this Court.

(b) **Eligibility.** Any member in good standing of the bar of the Supreme Court of Ohio is eligible for admission as a permanent member of the bar of this Court.

(c) **Application for Admission**

(1) All candidates for admission to the bar of this Court, other than those eligible under subsection (c)(2) and (c)(3) of this Rule, shall file with the Clerk at least seven (7) days prior to the examination for admission an application on the form provided by the Clerk. The candidate shall affirmatively certify that he or she is familiar with the Court's ECF system. The application shall also contain a certificate of two permanent members of the bar of this Court, vouching for the good moral character and professional reputation of the candidate. Each candidate shall be present for examination at the next examination after the filing of the candidate's application. If the candidate fails to be present, it will be necessary to file a new application.

(2) Applicants in good standing as members of the permanent bar of the United States District Court for the Northern District of Ohio for at least two years immediately preceding their application to become members of the bar of this Court are not required to submit the certificate of two permanent members of the bar of this Court, or to take and pass the examination for admission. Such applicants must, however, comply with all other requirements of Rule 83.3.

(3) Attorneys for the United States of America who are authorized by statute to appear in all federal courts are permitted to appear on behalf of the United States upon filing an application for admission on the form provided by the Clerk, and providing a current certificate of good standing from the highest court of the State in which the attorney is admitted to practice. Attorneys for the United States are not required to take and pass the examination for admission, submit the certificate of two permanent members of the bar of this Court, or pay the application fee for admission. Unless otherwise ordered, attorneys for the United States shall register with this Court for electronic filing.

(d) **Examination for Admission**. Under the direction of the Chief Judge, a committee appointed by the judges of this Court shall prepare and administer a uniform examination in the cities of Columbus, Dayton, and Cincinnati on the first Tuesday in June and December, or at such other time as may be ordered.

(e) **Applications for leave to appear *pro hac vice.*** In its discretion, the Court may grant leave to appear *pro hac vice* to any attorney who is a member in good standing of the bar of the highest court of any State. Any attorney seeking that type of admission must do so by way of a motion filed in each case in which the attorney wishes to appear. That motion must (1) be signed by a permanent member of the bar

of this Court; (2) be accompanied by the filing fee prescribed by the Court for *pro hac vice* admission except as provided in subsection (g)(4) of this Rule; and (3) be accompanied by a certificate of good standing from the highest court of a State (and not from another federal court) that has been issued not more than three months prior to the date of the motion. If the attorney seeking *pro hac vice* admission is eligible for permanent admission to the bar of this Court, the application shall also be accompanied by a written affirmation signed by the attorney that he or she will seek permanent admission as promptly as is practicable. Only one filing fee need be tendered if the attorney is seeking leave to appear *pro hac vice* in cases which have been consolidated under Fed. R. Civ. P. 42(a) for all purposes including trial. The names of attorneys who are not members of the bar of this Court and who have not been admitted *pro hac vice* may appear on Court filings, but such attorneys may not sign any document filed with the Court in that case or conduct any proceeding before the Court or any deposition taken in the case. Their names will also not appear as counsel on the Court's docket and they will not receive any notices or mailings from the Court.

(f) **Rights and responsibilities of attorneys admitted *pro hac vice*.** Any attorney admitted *pro hac vice* is subject to the same requirements as are permanent members of the bar of this Court, including those requirements relating to registration for electronic filing. The Court may, in accordance with governing substantive law, revoke an attorney's *pro hac vice* status at any time. Unless otherwise ordered pursuant to S.D.Ohio Civ. R. 83.4(a), an attorney admitted *pro hac vice* may not serve as the trial attorney for any party.

(g) **Fees**

(1) Upon admission or upon application for readmission following disbarment or suspension from the bar of this Court, the attorney shall pay to the Clerk such fees as shall be prescribed by the Judicial Conference of the United States and by order of this Court. Any fee prescribed by order of this Court shall be paid into the Court's Attorney Admission Fund to be used for such purposes as inure to the benefit of the bench and bar in the administration of justice within this District as determined to be appropriate by the Court.

(2) Each attorney applying for initial admission to the bar of this Court shall tender to the Clerk any fee prescribed for such admission by order of this Court. Should the applicant not pass the bar admission examination administered by this Court, the fee will not be returned to the applicant except for good cause shown by the applicant. An applicant who wishes to re-take the bar admission examination at the next available opportunity is not required to tender any such fee again unless the previously tendered fee was returned.

(3) Each attorney previously disbarred or suspended from the bar of this Court, shall tender to the Clerk any fee prescribed for readmission by order of this Court upon application for readmission to the bar of this Court. Such readmission shall be subject to the Order for Readmission of this Court.

(4) All attorneys seeking admission *pro hac vice* pursuant to subsection (e) of this Rule shall tender to the Clerk any fee prescribed for admission *pro hac*

vice by order of this Court. This fee shall not be collected from attorneys representing governmental agencies of the United States, members of the Ohio Attorney General's Office or attorneys employed by the Ohio Public Defender who appear in either civil or criminal matters.

(5) All such fees collected by the Clerk shall be deposited for the use of the bar and the Court in the Court's Attorney Admission Fund to be used for such purposes as inure to the benefit of the bench and bar in the administration of justice within this district as determined to be appropriate by the Court.

(h) **Disciplinary Enforcement**. The conduct of attorneys admitted to practice before this Court, including attorneys admitted *pro hac vice,* and the supervision of their conduct by this Court shall be governed by the Model Federal Rules of Disciplinary Enforcement (with the exception of Rules XI and XII). (See Appendix to these Rules.)

83.4 TRIAL ATTORNEY AND CO-COUNSEL

(a) **Designation and Responsibility**. Unless otherwise ordered, in all actions filed in, transferred to or removed to this Court, all parties other than *pro se* parties shall be represented at all times by a "trial attorney" who is a permanent member of the bar of this Court in good standing. Each filing made on behalf of such parties shall identify and be signed by the trial attorney. The trial attorney shall attend all hearings, conferences and the trial itself unless excused by the Court from doing so. Admission *pro hac vice* does not entitle an attorney to appear as a party's trial attorney, but the Court may, in its discretion and upon motion that shows good cause, permit an attorney who has been so admitted to act as a trial attorney.

(b) **Service.** All notices and communications from the Court and all documents required to be served on other parties by these Rules and by the Federal Rules of Civil Procedure shall be served upon the trial attorney. (Also see S. D. Ohio Civ. R. 5.2, "Certificate of Service".) Trial attorneys shall be responsible for notifying co-counsel or associate counsel of all matters affecting the action.

(c) **Withdrawal or Substitution of Trial Attorney.** A trial attorney may be allowed to withdraw, or a new trial attorney substituted, only by filing either a notice or motion under subsections (c)(1) and (c)(2) of this Rule. The Court may impose terms or conditions upon any withdrawal or substitution. The Court will ordinarily not permit a trial attorney to withdraw from an action within twenty-one (21) days of trial or the date set for a hearing on any motion for judgment or dismissal. The substitution of a trial attorney, even if it is allowed within twenty-one (21) days of a trial or hearing, does not automatically entitle a party to the postponement of the trial or hearing.

(1) Substitution of a new trial attorney. The current trial attorney may withdraw either from the case or from the designation as trial attorney by filing a notice that is signed by (1) the current, withdrawing trial attorney; (2) the client; and (3) a new, substituting trial attorney. If the substituting trial attorney is a member of the same partnership, legal professional association, or governmental attorney group as the trial attorney to be substituted for and the notice affirmatively states that the substitution is made with the client's knowledge and consent, the client's signature is not required. Alternatively,

if the withdrawing trial attorney is a governmental attorney who has undergone a change in employment status which renders him or her ineligible to continue to represent the governmental parties in the case, a new trial attorney may be substituted through the filing of a notice that so states, which is signed by new trial counsel, and which affirmatively indicates that the substitution is made with the client's knowledge and consent.

(2) Motion for Withdrawal and/or Substitution. In any case in which the requirements of the preceding subsection cannot be met, the withdrawal of the current trial attorney, either from the case or from the designation as trial attorney, must occur by way of motion and order. Any motion to withdraw from further representation of the client must meet the following requirements: (1) it must be served upon the client and the certificate of service must so state; (2) it must assert that good cause, as defined by the Rules of Professional Conduct, exists to permit the withdrawal; and (3) it must be accompanied by an affidavit or other evidence supporting the assertion of good cause. If the evidence relied upon in support of the motion would be detrimental to the client's interest if disclosed to the other parties, the withdrawing attorney shall move for an order that the evidence be filed *in camera* and under seal. The Court will not ordinarily grant a motion for leave to withdraw until the client has been given an opportunity to respond to the motion unless the motion demonstrates that the client agrees to the withdrawal and/or has terminated the services of the withdrawing attorney. Unless an order to the contrary is issued or the Court grants the motion for leave to withdraw, the attorney seeking leave to withdraw must continue to perform the functions of the trial attorney while the motion is pending. If the current trial attorney wishes to withdraw from that designation but not from the case, and a notice of substitution that complies with the preceding subsection cannot be filed, trial counsel must file a motion showing good cause for the withdrawal. The Court will not ordinarily grant such a motion unless a new trial attorney has been designated.

(d) **Co-Counsel**. Any attorney who has appeared in a case in any capacity other than as trial attorney is considered to be co-counsel for the party or parties on whose behalf the appearance has been entered. Co-counsel may withdraw by way of a notice of withdrawal signed by the withdrawing attorney and by the trial attorney for the party on whose behalf co-counsel has previously appeared. By signing such a notice, the trial attorney represents that the client has authorized the withdrawal. If the trial attorney is unwilling or unable to sign such a notice, co-counsel who wish to withdraw must file a motion that complies with subsection (c)(2) of this Rule.

Chief Magistrate Judge Kemp, who drafted the amendments to these two Rules, provided the following rationale:

Rule 83.3:

Some of the changes are stylistic. The current rule is lengthy and

addresses both how to apply for *pro hac vice* admission and certain rights and responsibilities of attorneys who are so admitted. Splitting these concepts may result in clearer rules, especially since content has been added to the first part of the rule that makes it longer than the current rule.

The first sentence of former Rule 83.3(e) is eliminated. The Court's preference for attorneys to seek permanent admission cannot, by definition, apply to attorneys who are ineligible to do so. Language has been added that requires an attorney who is eligible for permanent admission, but who is seeking *pro hac vice* status, to certify that he or she will seek permanent admission promptly.

In practice, the Court has been requiring motions for *pro hac vice* admission to be signed by a permanent member of the bar of the Court. The new rule makes that requirement explicit. It also makes clear that such attorneys are subject to all requirements that apply to permanent members of the bar, including but not limited to electronic filing requirements. It makes explicit that the Court will not accept a certificate of good standing from a federal court, something that is occasionally tendered with a *pro hac vice* application notwithstanding the language of the current rule, and it defines a "current" certificate of good standing to be one issued within three months of the date of the *pro hac vice* application. It also clarifies the current language permitting an attorney's name to appear on filings without the need for *pro hac vice* admission by specifying that such attorneys cannot conduct proceedings in the case and will not be listed on the docket or be entitled to receive filings from the Court. It states that only one filing fee is needed if the attorney is moving for *pro hac vice* admission in a group of consolidated cases. I am not sure the Court has followed a consistent practice in that situation, so this may be a change in current practice for some Judges. Finally, it dovetails into Rule 83.4 by stating that unless otherwise ordered, the attorney admitted *pro hac vice* cannot serve as the trial attorney.

Rule 83.4:

The proposed changes are intended primarily to clarify or amplify the existing requirements for trial attorneys and co-counsel. Because the role of co-counsel is addressed in the Rule, the title of the rule has been changed to reflect that it addresses that subject.

The new rule clarifies several things implicit in the prior version: that the Court may, upon motion, allow an attorney admitted *pro hac vice* to serve as the trial attorney; that a motion for leave to withdraw from the case, whether filed by a trial attorney or co-counsel, must not only assert good cause under the Rules of Professional Conduct, but must be accompanied by some evidence supporting that showing; that such motions may, if appropriate, be filed under seal and *in camera* in order to avoid disclosure of privileged or sensitive information; and that the Court will not ordinarily act on such a motion until the client has had a chance to

be heard.

There are several new provisions. A new rule is stated for governmental attorneys. Often, because of a transfer or resignation, the trial attorney for a governmental client becomes ineligible to continue to serve in that capacity. Sometimes the attorney is unavailable to sign a notice of substitution. In that instance, the new governmental attorney assigned to the case may simply file the notice. A separate procedure is also established for the withdrawal of a trial attorney who will remain as co-counsel in the case. Because the attorney is not withdrawing from the case, the Rules of Professional Conduct would not appear to be applicable, but the attorney should still be required to show good cause for the change in status, and the Rule makes clear that until a new trial attorney is designated, the Court will not usually approve such a motion.

5. Proposed New Rule 4.4

4.4 Service in a Foreign Country

A request by a party to the Clerk to serve process in a foreign country by mail under Fed. R. Civ. P. 4(f)(2)(C)(ii) must be accompanied by a certificate of the trial attorney or an affidavit of a party proceeding *pro se* that the attorney or party has determined that service by mail is authorized by the domestic law of the country in which service is to be made.

Rationale:

The Clerk recommended this change to satisfy a recommendation from General Counsel to the Director of United States courts:

> The Office of the General Counsel strongly recommends that the court require, by local rule or order, that attorneys seeking service of process in a foreign country by mail provide an affidavit that they have determined that service by mail is authorized by the domestic law of the foreign country.